

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

PATTY EDWARDS,

Plaintiff,

vs.

**PORTS PETROLEUM COMPANY, INC.,
d/b/a FUEL MART,**

Defendant.

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CASE NO. 8:05CV307

ORDER

This matter is before the Court on Defendant's Motion to Dismiss (Filing No. 23-1) and the recommendation of Magistrate Judge Gossett that this case be dismissed with prejudice (Filing No. 27). The Motion is supported by an Affidavit of Defendant's counsel, Shawn Grimsley (Filing No. 23-2), in which he states that the Plaintiff, Patty Edwards, has failed to respond to discovery, failed to comply with the Federal Rules of Civil Procedure governing discovery, and failed to appear in response to orders of this Court. The Plaintiff has not opposed the Motion to Dismiss, and Plaintiff's counsel has moved to withdraw.

Pursuant to Fed. R. Civ. P. 41(b) this action will be dismissed for the Plaintiff's failure to prosecute and failure to comply with the rules and orders of this Court. I accept the recommendation of Judge Gossett that the case should be dismissed, except that I find the dismissal shall be without prejudice. However, if the Plaintiff commences a future action against the Defendant based on the same claim or claims, the Defendant may move for an order for the payment of its costs incurred in this action, including attorney fees, pursuant to Fed. R. Civ. P. 41(d).

IT IS ORDERED:

1. The recommendation (Filing No. 27) is adopted, except that the dismissal shall be without prejudice;

2. Defendants' Motion to Dismiss (Filing No. 23-1) is granted; and
3. The Plaintiff's action is dismissed, without prejudice; and
4. The parties shall bear their own costs and fees, absent re-commencement of the action by the Plaintiff.

DATED this 23rd day of May, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge